

REMARKS

I. Status of the Claims

Claims 1-24, 43-47, and 56-57, and 60-102 are pending. Claims 25-42, 48-55, and 58-59 have been canceled without prejudice or disclaimer. Claims 5-7, 11-13, and 16-22 are objected to and claims 1-4, 8-10, 14, 15, and 23-102 stand rejected.

Claims 1, 6, 43-45, 91, 96, and 101 have been amended. Claims 1, 91, 96, and 101 have been amended to specify that the at least one associative polymer is cationic, comprises at least one fatty chain and is "chosen from: (i) quaternized celluloses modified with groups comprising at least one fatty chain, (ii) quaternized hydroxyethylcelluloses modified with groups comprising at least one fatty chain, and (iii) cationic polyurethanes." Support for these amendments can be found in the specification and claims as-filed, for example, in original claim 42. Claim 6 is amended to correct a typographical error. Claims 43-45 have been amended to fix their dependency.

Applicants respectfully acknowledge the Examiner's indication that claims 5-7, 11-13, and 16-22 would be allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims. Applicants believe all claims to be patentable, and therefore have kept claims 5-7, 11-13, and 16-22 as dependent claims.

II. Rejections under 35 U.S.C. § 103(a)

A. Claims 1-3, 25-44, and 60-102 in view of Cottard

The Examiner rejects claims 1-3, 25-44, and 60-102 under 35 U.S.C. § 103(a) for allegedly “being unpatentable over” U.S. Patent Application Publication No. 2001/0023515 A1 to Cottard et al. (“Cottard”). Office Action at 2. Specifically, the Examiner asserts that Cottard “teaches a composition for dyeing hair comprising oxidation dyes (see page 1, paragraph, 0013), anionic polymers comprising at least one fatty chain (associative polymers) as claimed in claims 1-3 and 25-44 (see page 2, paragraphs, 0040, 0041, 0042 and pages 3, 4, and 5), cationic polymers comprising at least one fatty chain as claimed in claimd 48- and an amino organomodified silicone compounds [sic] (aminosilicone) (see page 17, paragraph, 0337)” *Id.*

Applicants respectfully traverse this rejection for at least the reason that the Examiner has not established a prima facie case of obviousness. In order to establish a prima facie case of obviousness, the Examiner must meet three basic criteria. Among these are the requirement that the cited reference or references must teach or suggest all of the claim limitations, and the requirement that the Examiner must demonstrate that there would have been some suggestion or motivation, either in the cited reference or in the knowledge generally available to one of ordinary skill in the art, to modify the reference teachings. See M.P.E.P. § 2143. The Examiner has not met either of these criteria in the present case.

The Examiner admits that the “instant claims differ from the reference by reciting the weight ratio between aminosilicone to associative polymer to be equal or greater than 1.” *Id.* at 3. The Examiner ignores this deficiency by contending that “it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a dyeing composition having the claimed weight ratio between aminosilicone compounds and associative polymers.” *Id.* Such a statement by the Examiner does not remedy the flaws in his attempt to show obviousness, specifically, the fact that Cottard does not teach or suggest all claim limitations as required by M.P.E.P. § 2143.

“**All words** in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03 (citations omitted) (emphasis added). Claim 1 recites, in relevant part, that “the weight ratio of the at least one aminosilicone to the at least one associative polymer is greater than or equal to 1.” See, e.g., claim 1. These elements, the at least one aminosilicone and its weight ratio with the at least one associative polymer, are recited in all of the present independent and dependent claims, and are demonstrated in a non-limiting manner in the Example of the specification. These elements are not taught or suggested by Cottard.

Specifically, the Examiner’s assertion that the claimed weight ratio between aminosilicone compounds and associative polymers would have been obvious is completely baseless. There is no teaching or suggestion in Cottard that the ratio weight ratio between aminosilicone compounds and associative polymers is a “result-effective

parameter” as is required by M.P.E.P. § 2144.05 . (“A particular parameter must first be recognized as a result-effective variable . . . before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation.”).

M.P.E.P. §2144.05(II)(B). In contrast, and contrary to the Examiner’s contention otherwise, the present disclosure does make it clear that the weight ratio between aminosilicone compounds and associative polymers is a result-effective parameter, as evidenced by the ratio being taught throughout the specification and claims as-filed.

In addition, Cottard can hardly be said to teach or suggest the claimed aminosilicone compounds as Cottard merely mentions “organomodified (such as by amine groups) silicones” in a broad and general list of “other agents” which the composition of Cottard may further optionally comprise. See Cottard at page 17, paragraph [0337]. The reference must direct those skilled in the art to the presently claimed invention without any need for picking, choosing, and combining various disclosures within the reference. See *In re Luvisi*, 342 F.2d 102, 106-107, 144 U.S.P.Q. 646, 649-50 (C.C.P.A. 1965) (Examiner’s obviousness rejection based on a “needle-in-the-haystack” type of disclosure was found improper).

Finally, the fact that Cottard teaches associative polymers is not relevant to the present claims as-amended. Cottard teaches that anionic, nonionic, and cationic thickeners may be used, without any teaching that would motivate one of ordinary skill in the art to select one type of thickener over the other. In order to make a prima facie case of obviousness, such a suggestion or motivation “must be found in the prior art

reference, not in the Applicant's disclosure." *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). No such motivation or suggestion is present in Cottard.

Accordingly, for at least the reasons above, the Examiner has not made a prima facie case of obviousness with respect to claims 1-3, 43-44 (claims 25-42 having been canceled), and 60-102 in view of Cottard.

B. Claims 4, 8-10, 14-15 and 23-24 in view of Cottard and Legrand

The Examiner rejects claims 4, 8-10, 14-15, and 23-24 under 35 U.S.C. § 103(a) for allegedly "being unpatentable over" U.S. Patent Application Publication No. 2001/0023515 A1 to Cottard et al. ("Cottard") in view of U.S. Patent Application Publication No. 2003/0140429 A1 to Legrand et al. ("Legrand"). Office Action at 4. The Examiner admits that Cottard "does not teach or disclose aminosilicone polymers chosen from aminosilicones of the claimed formulae (I), (II), and (III) as claimed." *Id.*

Thus the Examiner cites Legrand, asserting that it "teaches a composition comprising aminosilicone polymers having formula (I), in which at least one of the radicals R1 to R3 is an alkoxy radical as claimed in claims 4, 8-10 and 14-15 . . . and wherein the aminosilicone polymers are presented in percentage amounts that overlapped with the claimed percentage amounts as claimed in claims 23-24." *Id.* The Examiner then concludes that "one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Cottard . . . by incorporating the aminosilicone polymers as taught by Legrand . . . to make such a

composition with a reasonable expectation of success.” *Id.* Applicants respectfully traverse this rejection for the reason that the Examiner has failed to make a prima facie case of obviousness.

As discussed above, the Examiner has failed to show that Cottard teaches or suggests all the limitations of the base independent claims as required under M.P.E.P. § 2143. Legrand does not cure the deficiencies of Cottard with respect to independent claim 1, and thus does not cure the deficiencies of Cottard with respect to claims 4, 8-10, 14-15, and 23-24.

In addition, the Examiner “must show reasons that the skilled artisan, confronted with the same problems as the inventor and with **no knowledge of the claimed invention**, would select the elements from the cited prior art references for combination **in the manner claimed**.” *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998) (emphasis added). “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” M.P.E.P. § 2143.01 (emphasis in original) (citations omitted).

The Examiner has not shown and cannot show that the cited references provide the requisite motivation for one of ordinary skill in the art, with no knowledge of the claimed invention, to create a composition comprising at least one oxidation dye, at least one cationic associative polymer chosen from three specific types, as claimed, and c) at least one aminosilicone, wherein the weight ratio of the at least one aminosilicone

to the at least one associative polymer is greater than or equal to 1, as is presently claimed. See, e.g., claim 1 as-amended. Further, one of ordinary skill in the art would not expect such a composition to lead to the improved physiochemical stability and improved coloration selectivity of the present invention. See specification as-filed at page 2, paragraphs [007]-[009].

Accordingly, for at least the reasons above, the Examiner has not made a prima facie case of obviousness with respect to claims 4, 8-10, 14-15, and 23-24 in view of Cottard and Legrand.

C. Claims 45-59 in view of Cottard and Laurent

The Examiner rejects claims 45-59 under 35 U.S.C. § 103(a) for allegedly “being unpatentable over” U.S. Patent Application Publication No. 2001/0023515 A1 to Cottard et al. (“Cottard”) in view of U.S. Patent Application Publication No. 2002/0046431 A1 to Laurent et al. (“Laurent”). Office Action at 5. The Examiner admits that Cottard “does not teach or disclose cationic associative polyurethanes [sic] polymers of the claimed formulae (IA), (VII), (VIII), (X) and (IX) as claimed.” *Id.*

Thus the Examiner cites Laurent, asserting that it teaches a cationic polyurethane of formula (Ia), “which is similar to the claimed formula (IA);” and monomers chosen from formulae (Ib) and (IIb), “which are similar to the monomers of the claimed formulae (VII) and (VIII).” *Id.* The Examiner then concludes that “one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Cottard . . . by incorporating the cationic polyurethane polymers as taught by Laurent . .

. to make such a composition with a reasonable expectation of success.” *Id.* at 6.

Applicants respectfully disagree for the reason that the Examiner has failed to make a prima facie case of obviousness.

As discussed above, the Examiner has failed to show that Cottard teaches or suggests all the limitations of the base independent claims as required under M.P.E.P. § 2143. Laurent does not cure the deficiencies of Cottard with respect to independent claim 1, and thus does not cure the deficiencies of Cottard with respect to claims 45-47 and 56-59 (claims 48-55 having been canceled).

In addition, the Examiner has not shown and cannot show that the cited references provide the requisite motivation for one of ordinary skill in the art, with no knowledge of the claimed invention, to create a composition comprising at least one oxidation dye, at least one cationic associative polymer chosen from three specific types, as claimed, and c) at least one aminosilicone, wherein the weight ratio of the at least one aminosilicone to the at least one associative polymer is greater than or equal to 1, as is presently claimed. See, e.g., claim 1 as-amended. Further, one of ordinary skill in the art would not expect such a composition to lead to the improved physiochemical stability and improved coloration selectivity of the present invention. See specification as-filed at page 2, paragraphs [007]-[009].

Accordingly, for at least the reasons above, the Examiner has not made a prima facie case of obviousness with respect to claims 45-47 and 56-57 (claims 48-55 and 58-59 having been canceled) in view of Cottard and Laurent.

CONCLUSION

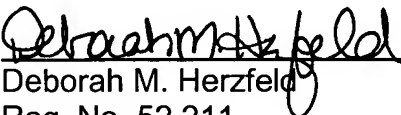
In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration of this application, and the timely allowance of the pending claims.

If the Examiner believes a telephone conference could be useful in resolving any of the outstanding issues, he is respectfully invited to contact Applicants' undersigned counsel at 202-408-4368.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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